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No. 87-323

In the Supreme Court of the United States

OCTOBER TERM, 1987

VLADIMIR SOKOLOV, ETC., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES

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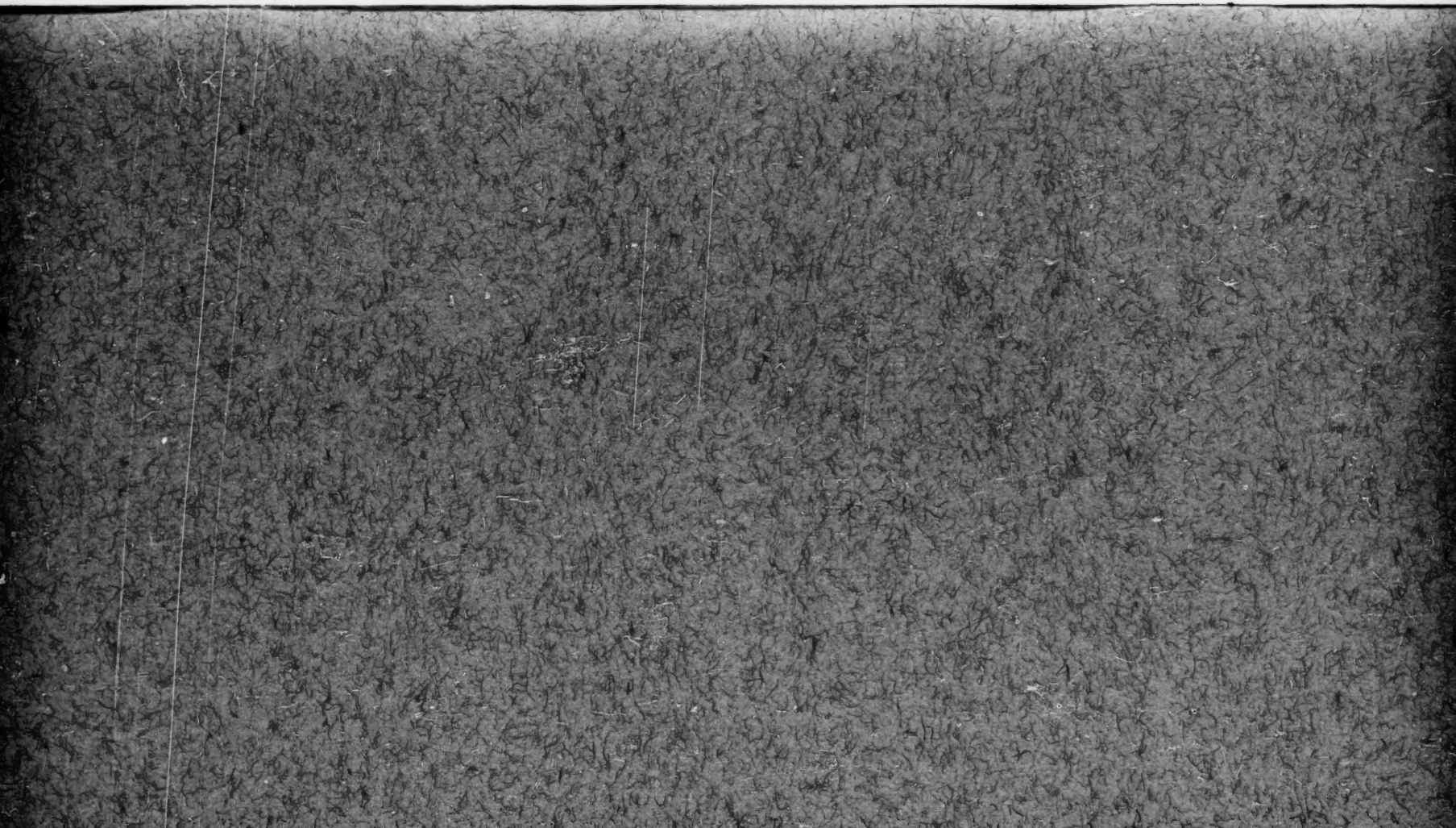

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Petitioner contends that the court of appeals erred in provisionally upholding an order revoking his citizenship.

1. The government filed this action pursuant to 8 U.S.C. 1451(a) to revoke petitioner's citizenship on the ground that his citizenship was illegally procured and was procured by concealment of a material fact. After trial, the district court found that petitioner's citizenship had been illegally procured because it had been premised on the receipt of a visa to which petitioner was not entitled under Sections 2 and 13 of the Displaced Persons Act of 1948 (DPA), ch. 647, 62 Stat. 1009, 1014, as amended by the Act of June 16, 1950, ch. 262, 64 Stat. 219.[1] Specifi-

[1] Section 2(b) of the DPA incorporated the definition of "displaced person or refugee" contained in the Constitution of the International Refugee Organization (IRO), a constitution ratified by the United States. Section 2 of the IRO Constitution deemed persons ineligible or "not of concern" if they had "assisted the enemy in persecuting civil populations" or had "voluntarily assisted the enemy forces since the outbreak of the Second World War * * *." Section 13 of the DPA barred the issuance of visas to any applicants who had "advocated or assisted in the persecution of any person because of race, religion, or

cally, the court found that petitioner's articles for *Rech*, a pro-Nazi publication controlled by a propaganda division of the German Army, contained "vicious attacks on Jews" (Pet. App. 37a-38a) and that this work rendered him not "of concern" to the Displaced Persons Commission (*id.* at 37a). Additionally, the court found that petitioner had willfully misrepresented and concealed his true wartime activities from United States immigration and naturalization authorities and that his misrepresentations to those officials were material (*id.* at 37a-39a).

The court of appeals provisionally affirmed the order of denaturalization but remanded the case for further proceedings (Pet. App. 1a-26a). While holding that the government had failed to satisfy its burden of showing that material misrepresentations were made at the visa application stage (*id.* at 15a-17a), it nonetheless concluded that denaturalization was appropriate because petitioner, through his employment with *Rech*, had assisted in and advocated the persecution of Jews, had assisted enemy forces, and had participated in a movement hostile to the United States. Those activities, the court found, rendered him ineligible for a visa under the DPA and resulted in the illegal procurement of his citizenship. *Id.* at 22a-23a. The court further found that petitioner's misrepresentations to an Immigration and Naturalization Service (INS) investigator in connection with his citizenship application also warranted denaturalization. It reasoned that if the INS investigator had discovered his employment with *Rech* as a German Army propagandist, petitioner would not have been found eligible for naturalization. Pet. App. 19a-20a.

The court of appeals, however, granted petitioner limited relief. Petitioner had maintained that portions of his immigration file or "A-file" had been improperly with-

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national origin" or had "participated in any movement which is or has been hostile to the United States or the form of government of the United States."

held from him (see Pet. App. 23a-25a). The court of appeals acknowledged the government's contention that only privileged documents had been removed from the file given to petitioner, but it concluded that it had "no way of knowing" if that was the case "absent in camera inspection of the A-file." Accordingly, the court of appeals remanded the matter to the district court "for such an inspection." *Id.* at 24a.

The district court subsequently held an in camera inspection. It found that the documents in the file "would [not] have been of any value to defendant even assuming that none were privileged" (Pet. App. 44a). On May 14, 1987, petitioner filed exceptions to the district court's ruling. On June 18, 1987, petitioner's attorney sent a copy of those exceptions—which the district court had not ruled upon—to Judge Oakes, who had authored the court of appeals' opinion, and requested that the panel conduct its own independent review of the A-file. On August 21, 1987, the court of appeals ordered a further hearing on this issue. On September 18, 1987, petitioner's attorney wrote to Judge Oakes requesting clarification of the court's order. On October 5, 1987, the clerk of the Second Circuit, acting on behalf of the court, asked the parties to discuss "how the August 21, 1987 order should be clarified." The government responded by arguing that the August 21, 1987, order was improvidently issued and should be vacated because no further proceedings were warranted. We noted, inter alia, that the district court had followed the court of appeals' remand order and that what petitioner was really complaining about was the remand order itself. Petitioner responded to the clerk's letter by urging that the A-file be reviewed—apparently by the court of appeals itself—in a proceeding in which his attorney could be present and make an offer of proof as to each document. The Second Circuit has not yet issued a further ruling.

2. Petitioner claims that he is not subject to denaturalization.[2] He further contends (Pet. 20-23) that the court of appeals erred in refusing to order that the documents in the A-file be produced, and that the in camera inspection by the district court was inadequate.

It is our view that this Court should defer consideration of the petition until the Second Circuit has clarified its August 21, 1987, order. One of the issues raised by petitioner in this Court—involving his entitlement to materials in the A-file—has not been definitively resolved. If the court of appeals adheres to its order that there should be a further hearing on the issue, the case will be interlocutory, and the petition should thus be denied, since at least one issue raised by petitioner will not have been resolved. Indeed, petitioner seems to be contending that the contents of the A-file may show that he is not subject to denaturalization (see Pet. 20-23). If he persuades the Second Circuit that he is correct, there will be no issue left in his petition to be decided by this Court. On the other hand, if the court vacates its August 21, 1987, order, the case will then be in a proper posture for this Court to act upon the petition.

We will promptly notify the Court when the Second Circuit has clarified its August 21, 1987, order. If the Second

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[2] Specifically, petitioner contends (Pet. 8-20) that the court of appeals (1) misconstrued the government's burden regarding "voluntariness" in holding that his activities with *Rech* rendered his visa and subsequent citizenship to have been illegally procured; (2) erred in applying the standard of materiality required under this Court's decision in *Chaunt* v. *United States*, 364 U.S. 350 (1960); and (3) erroneously substituted its own factual findings for those of the district court in deciding whether petitioner's misrepresentations were material.

Circuit vacates that order, we will respond on the merits to the claims raised in the petition.[3]

Respectfully submitted.

CHARLES FRIED
Solicitor General

NOVEMBER 1987

[3] Petitioner has filed a motion in this Court in which he similarly requests the Court to defer consideration of the petition. Petitioner's view, however, is that the case should be held until *after* any hearing conducted by the Second Circuit. As noted, it is our view that if the Second Circuit adheres to its order that further proceedings are necessary, the petition should be denied as interlocutory.

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